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Attorneys for Ad Hoc Committee of  
Yellowstone Club Members

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

IN RE:	)	Case No. 08-61570
	)	
YELLOWSTONE MOUNTAIN CLUB, LLC, et al.,	)	Jointly Administered
	)	
Debtors.	)	
	)	

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**LIMITED OBJECTION OF THE AD HOC COMMITTEE OF  
YELLOWSTONE CLUB MEMBERS TO ENTRY OF A FINAL  
ORDER APPROVING DEBTOR IN POSSESSION FINANCING**

The Ad Hoc Committee of Yellowstone Club Members owning in aggregate more than 170 individual properties and club memberships at the Yellowstone Club (the “Ad Hoc Committee”) objects to entry of a final order (the “Final Order”) approving the above-captioned debtors’ (collectively, the “Debtors” or “Yellowstone Club”) Motion Pursuant to Bankruptcy Code Sections 105, 361, 362, 363 and 364 and Bankruptcy Rules 2002, 4001, and 9014 for Final Orders (I) Authorizing Debtors to Obtain Post-Petition Financing, (II) Authorizing Debtors to Utilize Cash Collateral, (III) Granting Adequate Protection to Pre-

petition Secured Lenders and (IV) Scheduling Interim and Final Hearings (the “DIP Motion”) to the extent set forth herein.

As noted in the Ad Hoc Committee’s Limited Objection dated November 12, 2008 to the Interim DIP Motion (the “Interim DIP Objection”), the terms of the financing (the “DIP Loan”) proffered in the DIP Motion are over-reaching; the fees and expenses are exorbitantly high; and the DIP Loan does not provide the Debtors, their employees or their creditors with any degree of assurance that the operations or estates are on a path to resolve the financial challenges facing the Debtors.

In recognition of the fact that this Court has already entered the Interim Order approving the DIP Motion and undoubtedly a substantial amount of the funds financed pursuant to the Interim Order have been disbursed, the Ad Hoc Committee has avoided repeating herein the background associated with the filing of this Objection to entry of a Final Order and limited this Objection to a statement of the principal objections.

The Ad Hoc Committee specifically notes that the concerns it expressed in its original Interim DIP objection only increase with the passage of time and the absence of any identified package for short-term or long-term financing and the absence of any reasoned plan for the recapitalization or sale of the assets of the estates. As each day goes by with more uncertainty and decreasing member support, the considerable risk of the loss value of the estates continues to grow.

#### **FINAL ORDER**

1. The Ad Hoc Committee objects to entry of the Final Order to the extent the Final Order would approve the following terms:

a. *Carve Out.* The Final Order does not reserve a “carve out” for an official committee’s fees and expenses. While somewhat academic at this juncture

based upon the near-term maturity date of the financing, this could present an issue for future budgets.

*b. Surcharge Waiver.* The Final Order would waive all parties' rights to surcharge the collateral for preserving or disposing of the collateral. The Debtors might agree to such a waiver, but the rights of other parties in interest, including, but not limited to, an official committee of unsecured creditors or a trustee, should be reserved.

*c. Rights Upon Default.* The Final Order would allow the DIP Lenders to exercise all rights and remedies against the collateral upon the occurrence of an event of default and after the giving of only five (5) business days' written notice. Additionally, the Final Order would restrict all parties' rights by limiting the scope of issues that can be raised to the question of whether an event of default has occurred. Together, these provisions effectively strip the Court of its discretion to hear other matters that may have otherwise been properly before the Court as a court of equity and place the burden on the parties and the Court to have an order entered within a week's time enjoining any inappropriate action. Finally, the Final Order would also require that the Debtors use best efforts to sell collateral after stay relief. However, once stay relief is granted, the secured party should only be permitted to exercise any applicable state-law rights subject to whatever defenses that may exist under applicable law. The Debtors should not be burdened with additional costs for actions that solely benefit the secured lender.

*d. Extensions of Investigation Period.* The Final Order would restrict the Court's ability to extend for cause the investigation period by requiring the pre-petition lenders' consent in all cases.

*e. Standing.* The Final Order should vest any official committee with standing to pursue claims releases by the Debtors in the Final Order.

*f. Term and Amount.* The term and amount of the DIP Loan provide for minimal operations for not more than 3 weeks, which results in nothing more than a bridge loan and is insufficient to provide the Debtors, the Members or employees any confidence that the Debtor will continue operating through the ski season.

*g. Interest and Fees.* Interest would accrue at the rate of 15% and fees are exorbitant. The DIP Loan has a \$150,000 arrangement fee and a \$50,000 agency fee. These fees amount to 4.5% of the DIP Loan amount for just a 3 week financing. On an annualized basis, these fees alone correlate to a 78% interest rate. In addition to these fees, the DIP Loan provides for the payment of legal fees in the amount of \$742,000 and fees for a chief restructuring officer in the amount of \$150,000, even though the Debtors recently hired a top-tier resort management company. Together, all fees and costs push the correlated annualized interest rate to 425%.

**WHEREFORE**, the Ad Hoc Committee requests:

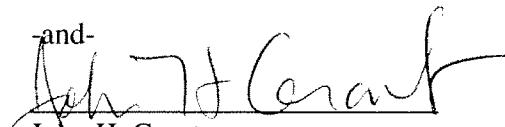
- A. That the Court modify the terms of the Final Order to be less prejudicial to the estate and the Court; and
- B. That the Court grant to the Ad Hoc Committee such other and further relief as may be just and proper.

Dated: Hartford, CT  
November 21, 2008

Respectfully submitted,

**BINGHAM McCUTCHEN LLP**

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*Attorneys for the Ad Hoc Committee*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 21, 2008, a copy of the foregoing Limited Objection Of The Ad Hoc Committee Of Yellowstone Club Members To Debtors' Motion To Approve Debtor In Possession Financing was served via email or fax upon the following:

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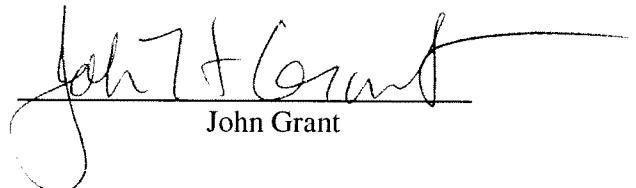
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A handwritten signature in black ink, appearing to read "John Grant".

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